

Date of Decision:

For Approval and Signature

The Hon'ble Mr. Justice C.K.THAKKER.

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether the case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder.
5. Whether it is to be circulated to the Civil Judge ?

Shri V.J.Desai, Advocate for the Petitioner.

Shri Y.F.Mehta, AGP for the Respondents.

CORAM: C.K.THAKKER J.

(26.7.1996)

ORAL JUDGMENT:

This petition is filed against the order of transfer Annexure.G to the petition dt. April 15, 1985 passed by the Medical Officer, Dohad. It states that in pursuance of the order passed by the Director of Health Services, the petitioner was ordered to be transferred from Dohad to Mehsana.

Being aggrieved by the above action, the petitioner approached this court. Serious allegations were levelled against respondent no.2. It appears that after the notice was issued an affidavit was filed on behalf of respondent no.2 against whom allegations were made. But no affidavit was filed on behalf of the respondent no.1. Hence, the court on August 13, 1985 passed the following order:

"Rule. There appears to be controversy between the petitioner Nurse and Dr.Gupta (respondent no.2). The petition is filed by the Nurse working in the Hospital

challenging the order of her transfer as malafide and on account of personal prejudice and bias of respondent no.2. The transfer order has been passed by respondent no.1 Deputy Director, Medical Services, Gujarat State, Ahmedabad. However, respondent no.1 has not filed affidavit to show that the petitioner was transferred for any administrative reasons and not on the grounds as disclosed in the petition. At this stage it is very difficult too decide as to who is at fault.

This Court (A.S.Qureshi, J.) passed a speaking ad interim order dated 3.6.1985. The matter was thereafter adjourned and I had directed the respondents to file affidavit. No doubt, respondent no.2 has filed affidavit, but the competent authority (respondent no.1) who has passed the order of transfer has not filed any affidavit, and since the petitioner has made serious allegations of mala fides, in my opinion, no reasonable ground is made out not to continue the ad interim order passed by this Court (A.S.Quareshi J.) on 3.6.1985.

In the aforesaid view of the matter, the ad interim order to continue till the disposal of this petition. However, the respondents are permitted to transfer the petitioner to Cottage Hospital, Dohad, if they so desire.

Dt. 13.8.1985. Sd.S.A.Shah J."

To day the matter is called out for final hearing. In my opinion, no useful purpose would be served by retaining the matter any further. The petition is of 1985. Even while passing the interim order the court had granted liberty that in view of the circumstances mentioned in the earlier part of the order, ad.interim relief was ordered to be continued. The respondents were permitted to transfer the petitioner to Cottage Hospital at Dohad if they so desire. In view of the fact that more than decade has passed, it would be proper to dispose of the petition at this stage. The order passed by the respondent at Annexure.G is quashed and set aside. It is,however, open to the appropriate authority to pass fresh order, if they so desire, in accordance with law and if the petition feels aggrieved by that order, she can take proceedings including filing of the petition in this court. Rule is made absolute with no order as to costs.

Dt. 26.7.1996. (C.K.THAKKER J.)

